

## **REMARKS**

In the *Office Action* mailed June 2, 2004, by Examiner McDermott in Art Unit 3635, Claims 1-6 are pending in the application and all stand presently rejected. By the present *Response*, Applicant respectfully traverses the Examiner's rejection for the following reasons.

### **1. Claim Rejections under 35 U.S.C. 102 (e)**

The Examiner has rejected Claims 1-6 under 35 U.S.C. 102 (e) as being anticipated by U.S. Patent Application No. 10/347,652 to DiCello ("DiCello"). As described below, Applicant respectfully traverses this rejection and requests reconsideration for the following reasons.

#### **A. U.S. Patent Application No. 10/347,652 is not available as a 35 U.S.C. § 102(e) reference.**

According to 35 U.S.C. § 102(e), "[a] person shall be entitled to a patent unless (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent." The DiCello reference does not appear to be a published patent application or a granted patent. A search conducted on the United States Patent and Trademark Office's public PAIR website revealed that there is no reference having Serial No. 10/347,652 that is publicly available. The pages indicating the results of this search are attached as "Exhibit A". Because DiCello is not a published patent application or a granted patent, it is not available as a reference under 35 U.S.C. § 102(e). Therefore, Applicant respectfully requests that the rejection be withdrawn.

#### **B. None of the other references listed on the PTO-892 Form appear to be the cited 35 U.S.C. § 102(e) reference.**

In the event that the Examiner may have made a typographical error regarding the Serial Number or the inventor's name for the DiCello reference, Applicant carefully reviewed the other references listed on the PTO-892 Form accompanying the *Office Action*. None of these references disclose "in figures 1-5 and in the specification a humidity extraction system comprising a trench 28 and conduits 56 and 60 communicating with the trench 28" as recited by the Examiner in the *Office Action*. Moreover, none of these references contain a "Figure 1 show[ing] the system disposed in a structure having a wall 10 and concrete floor 40" also recited by the Examiner. Applicant therefore concludes that these other references were merely listed to

show the state of the art generally and that none of them can be the DiCello reference. Applicant also respectfully submits that because the other references listed on PTO-Form-892 were not cited against the Application, none of these other references anticipate or render the currently pending claims obvious.

Being that the DiCello reference is not available under 35 U.S.C. § 102(e) and that no other references were cited against the pending claims, Applicant respectfully submits that all pending claims are in condition for allowance and requests that the Application issue as a patent.

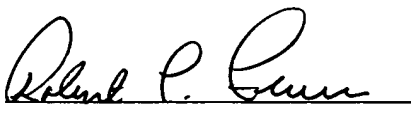
## **2. Fees**

No Claims fees are believed due, as the total number of Claims remains at twenty or less and the total number of independent Claims remains at three or less. Further, this *Response* is being filed within three months of the *Office Action*. Thus, it is believed that no extension of time fees are due. If, however, it is determined that fees are due, authorization is given to charge deposit account 20-1507.

## **CONCLUSION**

Applicant respectfully submits that the forgoing *Response* is a complete response to the *Office Action*, and that the pending Claims are in full condition for allowance. Accordingly, Applicant respectfully requests early and favorable action. The Examiner is invited and encouraged to contact the undersigned if such contact may enhance the efficient prosecution of the Application to issue.

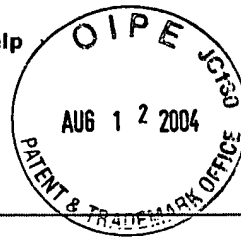
Respectfully submitted,

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